

CITY OF SAULT STE. MARIE, MICHIGAN,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 97-93-A
ACTING MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 3, 1997

On February 3, 1997, the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), forwarded to the Board a notice of appeal from appellant City of Sault Ste. Marie, Michigan. The notice of appeal concerned the Area Director's September 17, 1996, approval of a fee to trust acquisition of certain real property, described as the Maleport 1 tract, for the Sault Ste. Marie Tribe of Chippewa Indians. In the memorandum transmitting the notice of appeal, the Area Director stated:

It appears this is a misdirected appeal and is being forwarded in accordance with 25 CFR Part 2.13.

Our decision letter of September 17, 1996, to the City correctly provided instructions on where to file their appeal. If the City has failed to serve your office notice of the appeal within the thirty days of receipt of our decision, we hereby request that this appeal be dismissed in accordance with 43 CFR Part 4.332(a) on the basis that it is untimely.

A copy of the Area Director's September 17, 1996, decision concerning the Maleport 1 tract was included in the materials forwarded to the Board. The decision stated:

Our decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal * * * must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs * * *, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * * If you file a notice of appeal, the Board of Indian Appeals will notify you of further appeal procedures.

If no appeal is timely [filed], this decision will become final for the Department of the Interior at the expiration of the

appeal period. No extension of time may be granted for filing a notice of appeal.

On February 6, 1997, the Board ordered appellant to show cause why its appeal concerning the Maleport 1 tract should not be dismissed for failure to file a timely notice of appeal. The Board also provided appellant with a copy of the Area Director's memorandum forwarding the appeal to the Board.

Appellant responded that it had not received a decision concerning the Maleport 1 tract from the Superintendent, Michigan Agency, BIA. It stated that when it received the Area Director's decision, it thought that was the first decision, "and therefore sent [its] Notice of Appeal under 25 CFR Part 2 to all interested parties which included the [Agency] and the [Area Office]." Response at 1. Appellant now acknowledges that the notice of appeal was misdirected to the Area Office, but nevertheless requests that the appeal not be dismissed, in part because it alleges that the issues concerning the Maleport 1 tract are the same as those concerning other appeals it presently has pending before the Board.

Although appellant states that it filed its notice of appeal with the Area Director under 25 CFR Part 2, 25 CFR 2.4(e) provides that the Board has review authority over decisions issued by BIA Area Directors and 25 CFR 2.19 requires that a decision rendered by a BIA Area Director include a statement identifying the official to whom the decision can be appealed and indicating the appeal procedures. The Area Director's decision correctly stated that appellant's notice of appeal was to be filed with the Board. Appellant, however, chose to file its notice of appeal with the Area Director. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files its notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. E.g., Adams v. Portland Area Director, 30 IBIA 126 (1996), and cases cited therein. Under these circumstances, the Board has no choice under 43 CFR 4.332(a) but to dismiss appellant's appeal concerning the Maleport 1 tract for failure to file a timely notice of appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Minneapolis Area Director's September 17, 1996, decision is docketed and dismissed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge